IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Con.Case(C).No. 713 of 2007(S)

ARISING FROM THE JUDGEMENT IN OP.37134/2001 Dated 13/07/2006

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PETITIONER/ADDL.R3 IN OP:

KRISHNA SHIVRAM HEGDE,
S/O.SHIVRAM RAMMAYYA HEGDE,AGED 49 YEARS,
SUB DIVISIONAL ENGINEER (ADMINISTRATION),
OFFICE OF C.G.M(TRAINING), HEERANANDANI GARDENS,
POWAI, MUMBAI-400 076,
RESIDING AT B 15, THIRD FLOOR, ANKUR CO-OPERATIVE
HOUSING SOCIETY,THAKURLI, MAHARASTRA.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.) &
SRI.M.R.HARIRAJ

RESPONDENTS/PETITIONER IN OP:
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1. SHRI SATISH TANDON,
FATHERS NAME & AGE NOT KNOWN TO THE PETITIONER,
DDG ESTABLISHMENT, DEPARTMENT OF TELECOM,
SANCHAR BHAVAN, 20-ASHOKA ROAD, NEW DELHI.

2. SHRI.R.K.GOYAL,
FATHERS NAME & AGE NOT KNOWN TO THE PETITIONER,
DIRECTOR ESTABLISHMENT, DEPARTMENT OF TELECOM,
SANCHAR BHAVAN, 20-ASHOKA ROAD, NEW DELHI.

3. SHRI.D.S.MATHUR,
FATHERS NAME & AGE NOT KNOWN TO THE PETITIONER,
SECRETARY, DEPARTMENT OF TELECOM AND CHAIRMAN TELECOM
COMMISSION, SANCHAR BHAVAN,
20-ASHOKA ROAD, NEW DELHI.

BY ADDL.SOLICITOR GENERAL SRI.V.T.GOPALAN (SR) &
SRI.P.GOPINATH MENON

THIS CONTEMPT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

Cont.Case (C)No.713 of 2007

Dated, this the 9th day of October, 2007

JUDGMENT

H.L.Dattu, C.J.

Sri.Krishna Shivram Hegde, additional third respondent in O.P.No.37134 of 2001, is the complainant in this contempt petition filed under Sections 11 and 12 of the Contempt of Courts Act, read with Article 215 of the Constitution of India. In this contempt petition the petitioner alleges that the respondents in the contempt petition have wilfully and deliberately disobeyed the positive directions issued by this Court while disposing of O.P.No.37134 of 2001 dated 13th July, 2006.

2. To understand the case of the complainant, it may be appropriate for us to notice a few facts.

3. Examinations to fill up the posts of Telecom Engineering Service Group B Officers had not been conducted by the respondents for a very long time. Since that was a promotional post, aspirants for that post went before various forums requesting those forums to direct the respondents to conduct the qualifying/competitive examinations to fill up the posts of Telecom Engineering Service Group B officers in the respondent organization. The Tribunals and the Courts directed the respondents to hold qualifying/competitive examinations and thereafter fill up the post of Telecom Engineering Service Group B Officers. One such order was passed by the Central Administrative Tribunal in Application No.1497 of 1996.

4. The respondent in this contempt petition, being aggrieved by the orders and directions so issued by the Central Administrative Tribunal in O.A.No.1497 of 1996 was before this Court in O.P.No.37134 of 2001. This Court by its order dated 13th July, 2006 was pleased to dispose of the original petition and in that it was pleased to issue certain directions. The directions are as under:

> "They have to give sufficient notice by publication in the newspapers inviting the objections if any from the concerned incumbents and shall have to give effect to the order of the Supreme Court and as well as the earlier order of the tribunal in O.A.No.1497/96 giving proper ranking to the incumbents promoted as per Ext.R3(d) in O.P.No.37134/01 assigning them proper vacancies that had occurred before 22.7.1996. In this regard, we make a time bound direction that, assigning of vacancies shall be done within 2 months from the date of receipt of the copy of this judgment and the publication thereof shall be effected inviting objections in newspapers having vide circulation within two weeks, giving three weeks to file objections. The final order of assignment vacancies shall be given to the incumbents promoted as per Ext.R3(d) mentioned above, at any rate within 4 months from the date of such publication."

5. It is the grievance of the complainant in this contempt petition that the respondents in the contempt petition have not faithfully followed the orders and directions issued by this Court in O.P.No.37134 of 2001. Therefore, according to the petitioner, there is deliberate and wilful disobedience of the orders and directions issued by this Court and therefore, appropriate proceedings should be initiated against the respondents and punish them for their so-called wilful and deliberate disobedience of the orders and directions issued by this Court.

6. After entertaining this contempt petition, this Court had issued notice to the respondents and they have entered appearance. They have also filed their counter affidavit before this Court, inter alia, bringing to the notice of this Court that, firstly they have passed appropriate orders as directed by this Court

and, secondly that there is no wilful or deliberate disobedience of the orders and directions issued by this Court. The counter affidavit filed by the respondents is taken as part of the records.

7. This Court had directed the respondents to prepare the provisional seniority list of the Telecom Engineering Service Group Officers and after preparation of the provisional seniority list of the aforesaid officers to publish the same and invite objections, if any, from the persons who would be aggrieved by the ranking assigned to them in the provisional seniority list and after considering the objections, if any, filed by the aggrieved persons to the ranking assigned to them in the provisional seniority list, finalise the list and then fill up the vacancies to the post of Telecom Engineering Service Group B officers. That is how we understood the orders and directions issued by this Court.

8. After the disposal of the writ petition, the respondents by their order dated 13th October, 2006, have prepared the provisional seniority list of Telecom Engineering Service Group B Officers and had invited objections to the ranking assigned to the persons in the provisional seniority list. They have also stated in their letter dated 13th October, 2006 that the objections requires to be filed before two particular officers. The order/communication reads as under:

> "To October 13, 2006.
> All CGMs of Telecom Circles,
> All CGMs of Telecom Regions/Telecom Projects,
> All Heads of Administrative Units,
> Bharat Sanchar Nigam Limited.
>
> Subject:- O.P.Nos.21656/2001 & 37134/2001 titled UOI Vs.
> Geroge Paul & K.C.Jose.
>
> Sir,
>
> The Hon'ble High Court of Kerala has passed the judgment on 13.07.2006 in two OP Nos.21656/2001 & 37134/2001 titled UOI Vs. Geroge Paul & K.C.Jose regarding promotion and fixation of seniority of the officers (JTOs) who were declared successful in the Departmental Qualifying Cum Competitive Examination held in the year 2000 and

Special Supplementary Departmental Qualifying Cum Competitive Examination held in the year 2003. DoT has assigned seniority in respect of these officers. A copy of the provisional seniority list is enclosed.

It is requested that the provisional seniority list may be circulated among all concerned before 18.10.2006 and objections received in this regard may be sent to DoT and this office by 10.11.2006.

Sd/-
(Sanjay Kr.Choudhary)
Jt. Deputy Director General (Pers)
Tel: 23037181/ Fax:23734254

Encl:1
Copy to:

1. Shri.N.Raja, Under Secretary (SGT) DoT., Sanchar Bhawan New Delhi w.r.t.letter No.2-32/2001-STG.II dated 27.09.2006.

2. CMD, MTNL, New Delhi. The provisional seniority list is enclosed. Objections, if any, received from officers working in MTNL may be forwarded to DoT and this office.

3. ADG (Pers-II), BSNL C.O.".

9. The petitioner, for the reasons best known to him, has filed his objection to the provisional seniority list, but has addressed the same to 'the Advisor, HRD, Ministry of Comm & Information Tech., Dept. of Telecom. Sanchar Bhavan , 20 Ashoka Road, New Delhi-110 001'. This officer was not authorised to receive any objection that may be filed to the provisional seniority list prepared by the respondents

10. Since the respondents had not received any objection to the ranking assigned in the provisional seniority list, they have finalized the provisional seniority list by publishing the same on 13th February, 2007. This final seniority list is widely circulated. The same is as under:

"To February 13th, 2007
All CGMs of Telecom Circles,
All CGMs of Telecom Regions/Telecom Projects,
All Heads of Administrative Units,
Bharat Sanchar Nigam Limited.

Subject:- O.P.Nos.21656/2001 & 37134/2001 titled UOI Vs. Geroge Paul & K.C.Jose. - Circulation of final seniority list of Competitive Quota Officers - regarding.

> Sir,
>
> In continuation of this office letter of even number dated 13.10.2006, please find enclosed a copy of DoT letter number 2-32/2001-STG -II dated 1.2.2007 along with final seniority list of the officers who were declared successful in the Departmental Qualifying Cum Competitive Examination held in the year 2000 & Special Supplementary Departmental Qualifying cum Competitive Examination held in the year 2003.
>
> It is requested that the letter along with the final seniority list may be circulated among all concerned.
>
> Receipt of this letter may please be acknowledged.".

11. In our opinion, if for any reason, the complainant was aggrieved by the ranking assigned to him in the final seniority list that was prepared and published on 13th February, 2007 by the respondents, a separate cause of action would arise for him and he can definitely question the ranking assigned to him in the final seniority list prepared as directed by this Court before an appropriate forum.

12. In the instant case, the petitioner is of the opinion that the respondents have not complied with the orders and directions issued by this Court and therefore they have committed an act of contempt. In our opinion, the only direction that was issued by this Court is to prepare a provisional seniority list of Telecom Engineering Service Group B Officers and then invite for objections and then prepare the final seniority list. The direction so issued by this Court was faithfully followed by the respondents. Therefore, we are of the opinion that the respondents have neither deliberately nor wilfully disobeyed the orders and directions issued by this Court while disposing of O.P.No.37134 of 2001.

13. However, Mr.M.R.Rajendran Nair, learned senior counsel appearing for the complainant, would submit that the respondents had not invited objections as directed by this Court before preparing the final seniority list and

therefore, states that there is disobedience of the directions issued by this Court.

The contention so canvassed by the learned senior counsel is answered by Sri.V.T.Gopalan, Additional Solicitor General, appearing for the respondents, and submits that wide circulation was given by publishing the provisional seniority list in the 'Times of India' newspaper and 'The Hindu' newspaper and other local dailies. Therefore, he submits that the assertion made by the learned senior counsel appearing for the complainant may not be correct.

14. Learned senior counsel also produced before us the paper notifications issued by the respondents. After going through the said paper notifications, we are satisfied that the respondents before finalizing the provisional seniority list of the Telecom Engineering Service Group B Officers had invited objections and since no objections were received from any quarters, they have finalized the seniority list of the officers. In that view of the matter, in our opinion, the relief sought for by the complainant in this contempt petition cannot be granted by us. Accordingly, the contempt proceedings requires to be dropped and it is dropped.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns/DK.